IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.796 OF 1991

1. Bapu Bhau Chavan,

2. Jaysing Ramchandra Jadhav,

3. Kashinath Ramchandra Jadhav,

4. Vishnu Ramchandra Jadhav,

5. Maruti Ramchandra Jadhav,

6. Subhedar Ramchandra jadhav,

7. Rajaram Ramchandra Jadhav,

8. Eknath Pandurang Jadhav,

9. Ramchandra Gundaji Shirke,

10. shri Gangaram Tukaram Shirke,

11. Suresh Waman Shirke,

12. Raghunath Shanakr Mali,

13. Eknath Shankar Mali,

14. Pandit Shankar Mali,

Petitioner no.1 r/o Padali, Tal Koregaon,

Dist:Satara. P. Nos 2 to 8 r/o Jalgaon,

Taluka Koregaon.Dist:Satara

Petitioner nos 9 to 14 r/o Todavale South

Tal.Koregaon, Dist:Satara. .. Petitioners

Vs

Shri Narhar Narayan Bhise,

Chairman, Shri Jarandeshwar Deo

Maruti Deosthan, 3 Yadogopal Peth,

Satara. Respondent

Mr.M.V.Sali, for the petitioners.

Ms. Anjali Helekar i/b Shri S.M.Dharap, for the respondent.

CORAM : D.B.BHOSALE,J.

DATE : 8th October, 2004.

ORAL JUDGMENT:

1. This petition under Article 227 of the Constitution of India takes exception to the order dated 31.8.1990 passed by the Sub Divisional Officer, Koregaon, Sub Division, Satara in Tenancy Case No.22A/1987, by which the exemption certificate under section 88B of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, “The Act”) has been

granted in favour of the respondent-trust. The petitioners and some others were admittedly tenants in different pieces of land owned by the respondent-trust (for short, “the trust”). The trust was admittedly a registered trust since prior to 1.4.1957. To be more precise, it was registered on 8.12.1952 and was bearing Registration No.MSA-32/52 with the Assistant Charity Commissioner, Satara. The trust being an institution for public religious worship, it is covered by clause (b) of subsection (1) of section 88B of the Tenancy Act. It is against this backdrop, the application was made by the trust on 24.2.1986 seeking exemption certificate under section 88B. The application was decided by the Sub-Divisional Officer (for short, “SDO”) by the impugned order. The SDO, after considering the material placed before him granted exemption certificate under section 88B by recording the following reasons:-

> “The tenants who have objected to grant of certificate to the applicant have no case and hence their request cannot be considered as they are paying rent to the trustees. I have gone through

> the case papers, evidence on record and it is seen that the income of the trust is being utilised for the Deosthan by the trustee. It is therefore ordered that the exemption certificate under section 88B in respect of the lands shown in the Schedule appended to this order be issued to the applicant -trust."

Except the above discussion, the SDO has not addressed in the order as to why did he reached a conclusion that the trust complied with the conditions specified in clause (b)(ii) of sub-section (1) of section 88B of the Act.

2. Mr. Sali, learned counsel for the petitioners, submits that the order is cryptic and it is just a reproduction of section 88B. The SDO has not applied his mind to the facts of the present case as to whether the conditions specified in section 88B stand complied with or not. On the other hand, Ms Helekar, learned counsel for the respondent-trust, submits that the respondent-trust has produced sufficient material on record to show that both the conditions specified in section 88B stand

complied with. In support of her submission, she invited my attention to the evidence of the Chairman of the trust and other material to which I will advert to little later.

3. I have perused the order impugned in the instant petition as well as other material produced before me, as also the provisions of section 88B and Rule 52 of the Bombay Tenancy and Agricultural Lands Rules, 1956.

3.1. Section 88B, in so far as the present petitioners is concerned, it provides that nothing in foregoing provisions of the Tenancy Act, except sections 3,4B, 8, 9,9A, 9B, 9C, 10, 10A, 11, 13 and 27 and the provisions of Chapters VI and VIII in so far as the provisions of the said Chapters are applicable to any of the matters referred to in the sections mentioned above shall apply, to lands which are the property of a trust for an educational purpose (a hospital, Panjarapole, Gaushala) or an institution for public religious worship; provided that (i) such trust is or is deemed be registered under the Bombay public Trusts Act, 1950 and (ii) the entire income of such lands is appropriated for the purposes of such trust. Thus, the trust

falling in the category specified in this section, unless comply with the two conditions, namely, that it is registered under the Bombay Public Trusts Act, 1950 and its entire income of such lands is appropriated for the purpose of the trust, it shall not be entitled for the exemption certificate. Rule 52 provides the procedure for grant of certificate by the Collector for the purpose of section 88B. It states that a trustee in charge of a trust for an educational purpose, a hospital, panjarapole, gaushala or an institution for public religious worship claiming exemption under subsection (1) of section 88B may make an application in writing to the Collector within whose jurisdiction all or most of the pieces of land belonging to the trust are situated for the grant of a certificate for the purpose of section 88B. It further provides that the trustee shall state in his application (a) whether such trust is or is deemed to be registered under the Bombay Public Trusts Act, 1950, (b) the purpose for which the trust is created and © the manner in which the entire income from the lands belonging to it is appropriated. The trust is also expected to append to their

application (i) the balance sheet certified by a registered Auditor, (ii) a list of the lands which are the property of the trust, (iii) a certified copy of extract of record of rights relating to the lands and such other documents in support of his request. Sub rule 2 of Rule 52 provides that on receipt of such application, the Collector shall hold an inquiry and if it is satisfied that the trust satisfies the conditions laid down in the proviso to sub section (1) of section 88B, he shall issue certificate to the effect in form no.XXIII.

4. In the instant case, it appears that such application was filed by the trust. It is well settled that if the trust was registered prior to 1st April 1957, the tenant in possession would become deemed purchaser, subject to the outcome of the proceedings under section 88B of the Act. Inasmuch as, if such trust was to succeed in getting certificate under section 88B of the Act, then it would necessarily follow that the person cultivating the suit land cannot become deemed purchaser as such, but his right to remain in possession of the land will be subject to other provisions of the Act. The entitlement of the

trust to get certificate under section 88B of the Act will have to be reckoned as on 1st April 1957. Indeed, the respondent no.3 trust is registered prior to 1st April 1957 as an institution for public religious worship. The order impugned, however, does not state as to whether the conditions and in particular condition (b) (ii) of sub-section (1) of section 88B stand complied with or not and if yes why. The order is absolutely cryptic. It does not record reasons as to whether on 1.4.1957 the entire income of the lands of the trust was being utilised for the purposes of the trust. The order is totally silent as to why the SDO reached the conclusion that the income of the trust was being utilised for the purposes of the activities of the trust as on 1.4.1957. In so far as other condition specified in (b) (i) of sub-section (1) of section 88B is concerned, there is no dispute that the trust is registered under the Bombay Public Trusts Act, 1950 on 8.12.1952. It is also not disputed that the petitioners were the tenants and in possession of pieces of land owned by the trust.

5. This Court had an occasion to deal with section 88B

of the Tenancy Act in the case of Shri Kondiba Laxman Hanmar & others Vs. Shri Krishnarao Anandrao Dalavi and ors, Writ Petition No.4886 of 1986 decided on 28.6.2004, wherein after dealing with the provisions of section 88B, it was held that the entitlement of the trust to get certificate under section 88B of the Act will have to be reckoned as on 1.4.1957. In the concluding paragraph of the said judgment, by which the matter was remanded, this Court directed the authority to examine as to whether the material already on record or to be produced by the parties, would establish the position that the entire income of the land was appropriated for the purposes of the trust as on 1.4.1957, which will be the relevant date for issuance of exemption certificate under section 88B of the Act.

6. Ms. Helekar, learned counsel for the respondent-trust, submitted that there is sufficient material/evidence on record to reach a conclusion that even the condition specified in clause (b)(i) of sub-section (1) of section 88B stands satisfied. She took me through the evidence of the Chairman

of the trust. I am afraid, her submission cannot be accepted for two reasons. Firstly, while exercising supervisory jurisdiction under Article 227 of the Constitution the High Court is not expected to convert itself into a Court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inference drawn by the authorities below. That adjudication will have to be done by the fact finding authority and it will not be proper for me to take upon myself to wade through the entire record so as to cull out the finding that the income of the trust was being appropriated for the purpose of the trust. Secondly, the trust has admittedly not brought on record that at the relevant time i.e. 1.4.1957 its income was being appropriated for the activities of the trust. Since the SDO has not addressed in the impugned order on the aforesaid aspect, the appropriate course, in my opinion, is to relegate the parties to the SDO for consideration of that issue on its own merits, in accordance with law on the basis of record already produced with liberty to the parties to produce such other material that would be necessary and permissible in

law for answering the said issue during the course of remand enquiry.

7. In the result, the writ petition is allowed. The matter is remanded to the SDO. The SDO shall decide the application made by the trust afresh in the light of the observations made in the judgment and answer the issue as to whether the material on record and that will be produced by the parties, would establish that the entire income of the trust land was appropriated for the purpose of the trust as on 1.4.1957 which will be relevant date for issuance of exemption certificate under section 88B of the Act. The application of the trust be decided as expeditiously as possible and preferably within a period of one year from the date of receipt of this order after being given an opportunity of being heard to all the relevant parties to the proceedings.

8. At this stage, Mr Sali, learned counsel for the petitioners, states that since he did not get any response to the letters written to the petitioners, he has doubt whether all the petitioners are alive. If that be so, it is open for the heirs to

participate in the proceedings before the SDO.

9. Rule made absolute on the above terms. No costs.

(D.B.Bhosale, J.)

jwp796-91